

VIDEOCONFERENCING TECHNOLOGY IN ALGERIA'S JUSTICE SECTOR



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Submission date: 23/03/2025 Acceptance date: 29/05/2025 Publication date: 30/06/2025.



Abstract:

Abstract: Information and Communication Technology (ICT) has significantly impacted and dominated several sectors in recent years, including justice. The extension of its applicability is the main subject of this study. We also draw attention to the gradual decline of the traditional trial as the Algerian legislators explicitly incorporated visual records technology into most legal and regulatory texts. The right to a fair trial was unavoidably affected, particularly the right to a defence and public hearings. In addition, a new type of court procedure was developed in accordance with the demands of this technology, which benefited the work of litigants as well as judicial authorities.

Key Words: Fair Trial, Principle of Defence, Principle of Public Hearings, Remote Conferencing, Visual Records.

تقنية المحادثة المرئية (عن بعد) في قطاع العدالة بالجزائر

ملخص: إن توسع تطبيق تكنولوجيا الإعلام والاتصال وانتشار استخدامها في السنوات الأخيرة كان له الأثر البالغ في هيمنته على مختلف القطاعات بما في ذلك قطاع العدالة وهذا ما تم التركيز عليه من خلال هذه الدراسة التي ركزنا من خلالها على التراجع التدريجي للمحاكمة التقليدية من خلال تبني المشرع الجزائري صراحة تقنية المحاضر المرئية في أغلب النصوص القانونية والتنظيمية المتعلقة بقطاع العدالة، مما أثرت بطبيعة الحال على مبادئ وضمانات المحاكمة العادلة أهمها مبدأ الدفاع و مبدأ علانية الجلسات، بالإضافة إلى خلق وميلاد شكل جديد للإجراءات القضائية يتماشى مع متطلبات هذه التقنية والتي كانت له مزايا سواء على عمل الجهات القضائية أو المتقاضين كلاهما على حد سواء.

الكلمات المفتاحية: المحادثة عن بعد، المحاكمة العادلة، المحاضر المرئية، مبدأ الدفاع، مبدأ علانية الجلسات.



LA TECHNOLOGIE DE LA VISIOCONFÉRENCE DANS LE SECTEUR DE LA JUSTICE EN ALGÉRIE

Résumé :

Ces dernières années, les technologies de l'information et de la communication (TIC) ont exercé une influence majeure et ont prévalu dans plusieurs domaines, y compris celui de la justice. L'extension de son applicabilité est le sujet principal de cette étude. Nous attirons également l'attention sur le déclin progressif du procès traditionnel, le législateur algérien ayant explicitement intégré la technologie des enregistrements visuels dans la majorité des textes juridiques et réglementaires. Cela a naturellement eu un impact sur les principes et les garanties d'un procès équitable, en particulier les plus cruciaux, à savoir les principes de la publicité des débats et de la défense. De plus, un nouveau type de procédure judiciaire a été développé conformément aux exigences de cette technologie, ce qui a profité au travail des justiciables ainsi qu'aux autorités judiciaires.

Mots Clés : Procès équitable ; Principe de la défense ; Principe de la publicité ; Téléconférence ; Enregistrements visuels.

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Introduction:

In its many facets, the global digital revolution has led to significant advancements at every level and taken over every facet of life. Digitisation has expanded beyond the realm of individual-to-institution communications and correspondence to include administrative and economic transactions across numerous sectors, perhaps most significantly the justice and law sector. Notwithstanding its exclusion from use in the legal and judicial fields, it has gained popularity as an outcome of e-government. In order to increase court efficiency and protect plaintiffs' rights, it aims to improve traditional litigation procedures using digitisation and technology and expedite processes within reasonable timeframes in order to first ensure a fair trial and, second, to try to bring society closer to the government.

With the 2015 Law on the Modernisation of Justice, the Algerian legislator adopted a direct strategy in line with international trends in this area. Through the use of the word "conference-visio" to refer to remote videoconferencing, electronic litigation was created. The legislator incorporated it into all trial procedures, and the Corona Covid 19 pandemic clearly expanded its use. Thus, we will demonstrate in this study how far the use of remote videoconferencing technology can lead to a fair trial with all of its guarantees. In order to address the study's problem, the analytical method must be used to examine and elucidate the Algerian judge's handling of remote videoconferencing technology in accordance with certain international conventions that highlight its use in specific situations. For this reason, we suggested the following plan:

The First Topic: The Conceptual Framework of Remote Videoconferencing Technology

Although acceptance differs by country, ICT usage in judicial proceedings has grown essential globally. Unquestionably, its incorporation into the legal system has affected the rights of litigants, judicial procedures, and the assurances of a fair trial; for this reason, we will discuss the idea of remote videoconferencing technology and its legal foundation.

First Requirement: The Concept of Videoconferencing Technology (remotely)

In order to understand the legal framework around the use of remote videoconferencing technology, it is necessary to recognise the technology as a kind of contemporary audio and visual communication. In this article, we will discuss the definition and features of videoconferencing technology.

First Section: Definition of Videoconferencing Technology

Videoconferencing is thought to be the most effective means of overcoming Algeria's legal system's unduly archaic investigative and trial procedures. Since this term is still in use, in this section we will address the conceptual and legal definition of videoconferencing.



1) Conceptual Definition of Videoconferencing Technology:

The French phrase "Vidéo conférence" was the first to be used to refer to remote videoconferencing technology. While "conférence" refers to a group of people for an organised debate or conference on a certain topic, "vidéo" refers to television or any device that broadcasts sound and picture via various communication waves.

A dual-existence technology environment that makes it possible to administer disputes electronically is known as electronic litigation. It enables the virtual presence of judicial and administrative entities by combining the physical tribunal with an international network link. Using cutting-edge technology for the recording, storage, and transmission of case data, judges decide cases within this framework under laws that permit electronic judicial activities¹.

The linguistic meaning of this technology is not altered by the technical terms used to describe it. Through the use of remote videoconferencing technology, a group of people can communicate and have audio-visual conversations "By means of any kind of communications, the sending or receiving of signals, words, pictures, sounds, or information by cables, optics, wireless, or other electromagnetic methods, as well as any electronic media that guarantees communication in accordance with technical standards.

One of the most significant technological advancements that has added a new dimension to remote litigation is videoconferencing technology, which is also defined as simultaneously occurring audiovisual communication between people interacting in separate places, where through those sites, the Internet can be used to dialogue together or with the main site, through the capabilities of audio and video computers and digital video cameras where interlocutors in different sites can direct questions, enquiries, and comments to the main site and receive their answers and enquiries. With the use of this technology, a large number of people who are dispersed over long distances can be connected, such as the adjudicative body at the home of the judicial authority. All parties involved in the case, including defendants, victims, witnesses, experts, and attorneys, can communicate with each other via audio and video in a manner similar to that of a traditional courtroom, easily listening to and speaking with one another².

2) Legal Definition of Videoconferencing Technology

Remote videoconferencing technology is not defined under Law 15-03, which addresses the modernisation of justice³, or Ordinance No. 20-04, which changes and

¹Bouhnatala Yassin, Remote Videoconferencing Technology as a Mechanism to Simplify Criminal Case Procedures, *(In Arabic)*, Tabna Journal for Academic Scientific Studies, Vol. 4, No. 3, 2021, pp. 674-695, p. 678.

²Linda Mabrouk, Fair Trial Guarantees through the Use of Videoconferencing, *(In Arabic)*, Journal of Law and Political Science, Vol. 15, No. 1, 2022, pp. 1636-1660, p. 1641.

³Law No. 15-03 of November 1 2015, on the modernization of justice, Official Gazette No. 6, of February 10, 2015.



supplements the Code of Criminal Procedure¹. It is characterised as audiovisual technology that uses live audio and video broadcasting between courts and even prisons within a regulated legal framework to question an accused person, hold a confrontation, or hear a civil party, witness, or expert who is unable to appear in tribunal due to their status as the arrested defendant or for other reasons specified in Ordinance 20-04's article 441 bis.

Remote videoconferencing became a judicial need with Ordinance 04-20 of 30 August 2020 revising the Code of Criminal Procedure, supporting the modernisation of justice under Law 03-15 of 1 February 2015, especially in the midst of the COVID-19 epidemic. Regarding the remote video trial system, this is a novel issue since it states:

1. Removing the need for the defendant's prior permission:

Although the Modernisation of Justice law does not specify this, the Algerian legislator retracted this requirement and left the matter up to the adjudicative judge's discretion. The adjudicative body has been permitted to implement the system of remote visual trials independently, after addressing the Public Prosecution and informing the other plaintiffs, according to the application of Article 441 bis 7.

2. Implementation of the system of remote video trials in criminal cases:

The several judicial bodies that handle misdemeanours, offences, and even felonies are included in the wide definition of "adjudicative bodies" found in Article 441 bis 7.

According to the terms of Article 441 bis 11 of Ordinance No. 20-04, which states the repeal of all provisions contrary thereto, videoconferencing technology has been expanded to even criminal cases after being limited to misdemeanour articles exclusively in Law 15-03. However, practical experience has shown that the use of this technology is more prevalent in misdemeanour articles than infelonies².

Second Section: Features of Videoconferencing Technology (Remote)

The Justice Facility has recently tended to create new legal regulations in response to the quick advancements in technology. One such regulation is the use of remote videoconferencing technology because of its many benefits, while making certain that the rights of the defendant and the essential elements of a fair trial—in particular, the right to defend, confrontation, and oral pleading—are respected.

Given that most of international conventions in the criminal field prioritize respecting the principles of fair trial, this technique has constituted a new stage in the

¹Ordinance No. 20-04 of August 30, 2020, amending and supplementing Ordinance No. 66-155 of June 8, 1966, on the Code of Criminal Procedure, Official Gazette No. 51, of August 31, 2020.

²Belhassen Noura, Djilali Al-Hussein, Remote Videoconferencing, Between the Corona Pandemic and the Principle of Public Criminal Trials, *(In Arabic)*, Journal of Rights and Freedoms, Vol. 10, No. 01, 2022, pp. 1128-1147.



development of criminal procedures aimed at improving the criminal justice facility by expediting and simplifying criminal follow-up procedures, activating the penal law, and helping to prevent the loss of evidence.

This technology guarantees that all potential security risks are avoided during the transfer of defendants from the penal institutions where they are located to the courts and judicial councils where the sessions are held. It also reduces the time it takes to consider criminal cases arising from minor crimes and lowers the financial expenses incurred by the state in doing so.

Additionally, by guaranteeing that witnesses' identities are hidden in crimes that might endanger them, this technology shields victims, witnesses, other specialists, and judicial agents from various forms of pressure and intimidation.

Moreover, through letters rogatory in criminal issues, it helps to enhance and expedite the means of international mutual criminal aid between countries¹.

Second Requirement: The Legal Basis for Videoconferencing Technology (Remote)

We will look at the legal foundations of videoconferencing technology in both national and international law as part of this requirement.

First Section: Legal Basis for Remote Videoconferencing Technology in International Law

Videoconferencing is legally permitted in criminal investigations and trials under the European Convention on Judicial Assistance in Criminal Matters, which was enacted by the EU Council on November 30, 2000, updating the 1959 Convention. Subject to the defendant's approval and certain bilateral agreements, it allows its use for remote witness hearings and expert report exchanges across EU member states in compliance with national criminal legislation.

This technique has also been adopted by the Arab Convention against National Organized Crime, which permits testimony to be delivered in a way that ensures the protection of witnesses and experts and that they come to the country to appear before its legal authorities. This Convention stipulates that the defendant must provide his assent before being questioned and that a particular agreement between the two nations must exist, taking into consideration their respective national penal laws².

Second Section: Legal Basis for Remote Videoconferencing Technology in National Law

¹Amara Abdel Hamid, The Use of Remote Videoconferencing Technology in Criminal Investigation and Trial, *(In Arabic)*, Journal of Studies and Research, Vol. 10, No. 3, September 2018, pp. 57-75.

²Ibid.



One important piece of legislation allowing electronic litigation in Algeria is Article 1 of Law No. 15-03 on the Modernisation of Justice. It requires the electronic transmission of court papers, the creation of a central information system for the Ministry of Justice, and the use of remote videoconferencing in court proceedings. When necessary for the effective administration of justice or due to distance, Article 14 allows questioning and hearings by videoconference. Through its three paragraphs, Article 15 further outlines the range of applications for this technology as follows:

"The adjudicative body may use remote videoconferencing to hear witnesses, civil parties, and experts. The investigating magistrate may use it to question or hear someone and to conduct confrontations between multiple people."

The venue for electronic litigation is defined in Article 16 of Law No. 15-03, which states that the competent prosecutor and the seizure secretary must be present at the tribunal house that is closest to the residence of the person making statements for any interrogation, hearing, or videoconference confrontation.

If both the prosecution and the party in question agree, the adjudicative body may employ the same procedure to hear a detained defendant in misdemeanour proceedings. The videoconference is held remotely from the correctional facility if the person is in detention¹.

In order to secure the administration of justice and safeguard public health, Ordinance 20-04 authorised the use of audiovisual communication in investigations and trials in reaction to the COVID-19 epidemic and increasing infection rates (Article 441 bis). The use of this technology now conforms with Articles 441 bis 02 to 441 bis 06, which were formerly restricted to investigations and the hearing of witnesses and experts. Moreover, under Articles 441 bis 07 to 441 bis 10, the legislation requires its use during trials².

By Presidential Decree No. 02-55 on February 5, 2002, Algeria expressed doubts about the United Nations Convention against Transnational Organised Crime, which was adopted by the UN on November 15, 2000. This convention allowed for the application of this technique in the area of international judicial cooperation. According to that convention's Article 18, it is both possible and compatible with the Basic Principles for the statements of a witness or expert who is present on the territory of one Country Party to be heard by the legal authorities of another Country Party. National law states that if it is not practical for the person in question to physically visit the asking Country Party's territory, the first Country Party may, upon request from the other country, permit a meeting to be made by videoconference.

¹Law No. 15-03, op. cit.

²Ordinance No. 20-04, op. cit.



On October 7, 2015, Algeria held its first national trial remotely at the Kolea Tribunal. On July 11, 2016, a French individual was tried remotely at the M'sila District Court, where the witness was heard at the Nanterre Judicial Court in France¹.

The Second Topic: The Effect of Remote Videoconferencing Technology on a Fair Trial

Legal protections that preserve justice and defend basic rights must be the foundation of a fair trial. The lawsuit's parties and the fair trial principles are the two main subjects of this study. One essential right that countries aim to include in their legal systems is the guarantee of a fair trial.

Chapter IV, "The Use of Remote Videoconferencing During Judicial Proceedings," of Law 15-03 on the modernisation of justice, lays forth the requirements and protocols for using remote videoconferencing in court proceedings. However, this regulation lacks substantial substance in contrast to the most recent modification to the Code of Criminal Procedure, which completely controls audiovisual communication in Articles 441 bis to 441 bis 11².

First Requirement: The Impact of Videoconferencing Technology on The Rights of The Defence

Article 175 of the Constitution and other legal documents indicate that the right to defence is guaranteed by Algerian law, as it is in other legal systems. Only via a fair trial that guarantees the preservation of all parties' rights may the defendant use this right to demonstrate their innocence and deny charges.

First Section: Protection of Rights of Defence

The freedom to prove a claim or defence submitted to him before any judicial body, whether regular or extraordinary, established by law or to which the parties are subject voluntarily, is known as the right of defence. It ensures that this freedom can be exercised³.

Therefore, some people think that using remote trial techniques removes the human element from the trial because the defendant's right to benefit from the judge's human feelings is affected by the visual or audio procedures. The defendant may not be able to express himself and what is going through his mind as it should, and the judge may also be unable to appreciate his words or feelings because the defendant's body language and manner of speaking are often used to judge cases. Communication technology can be used to ensure that each party defends its interests before the

¹ Abdelkrim Laajaj, Abbas Shafaa, Remote Video Trial and the Requirements of Public Trial and its Justice, (*In Arabic*), Algerian Journal of Legal and Political Sciences, Vol. 58, No. 5, 2021, p. 115, p. 137, p. 127.

² Noura Belhassen, Remote Videoconferencing, The Corona Pandemic and the Principle of Public Criminal Trial, (*In Arabic*), Journal of Rights and Freedoms, Vol. 10, No. 02, 2021, p. 1135.

³ Moulay Meliati Baghdadi, Human Rights in Islamic Law, (*In Arabic*), Ksar al-Kitab, Algeria, 1999, p. 64.



judiciary, but this technique does not allow the defendant to express himself as comfortably as in regular sessions because the judge cannot infer his response to a particular question that may be embarrassing for him¹.

Since there is no clear clause guaranteeing the lawyer's attendance during hearings, interrogations, or confrontations involving the defendant and the civil party, the legislator may have failed to consider the possible effects on these parties.

Second Section: Protection of Witnesses

Since Article 24/b of the United Nations Convention against Transnational Organized Crime provides for the protection of witnesses by allowing them to testify using communication technology, remote trials are crucial and effective in protecting the parties to the case, especially witnesses, so that they can be easily transferred to the hearing rooms and avoid the hardship or fear of testifying in court using testimony transmitted remotely to avoid friction or direct contact between the witness and the defendant².

Second Requirement: The Impact of The Application of Videoconferencing on The Principles of Fair Trial

The fundamental principles of presence, publicity, and the right to legal representation guarantee a fair trial.

First Section: The Right to Personal Attendance at the Trial Session (The Principle of Presence)

Since the rule of trying the defendant in person has been enshrined in many trials, institutes, and contemporary legislation with great attention—this is what was implicitly referred to in Article 06 of the European Convention on Human Rights and other conventions, and adopted by many laws of countries—personal attendance is a sure and necessary guarantee to embody the principle of orality of pleading as well. This is because the presence of the accused allows these procedures to proceed normally in accordance with applicable legislative regulation³.

The technique, which was previously only used during the investigation phase to question and interview witnesses, has spread remarkably, particularly in the aftermath of the Corona pandemic, when Algeria had to use it to prevent the spread of infection and ensure the proper administration of the courthouse.

The legislator eliminated the need for in-person participation by amending the Code of Criminal Procedure to permit remote conferences.

¹Abdelkrim Laajaj, Abbas Shafaa, Remote Video Trial and the Requirements of Public Trial and its Justice, (*In Arabic*), Algerian Journal of Legal and Political Sciences, Vol. 58, No. 05, 2021, p. 133.

²UN document 2/2013/2 WG/COP/CTOC of August 19, 2013, on Assistance, Good Practice and Comparison of National Legislation in the Field of Identification, Identification and Protection of Victims of Organized Crime, p. 08.

³Mahmoud Najib Hassan, Explanation of the Code of Criminal Procedure, (*In Arabic*), second edition, Dar Al-Nahda Al-Arabiya, 1989, p. 14



Second Section: The Principle of Publicity of the Trial

The trial's publicity is an essential guarantee of the defendant's right to self-defence because it provides him with the chance to defend himself in court, publicly voice his displeasure if his rights are being infringed, and publicly declare his innocence if he is innocent¹.

In order to ensure openness and fairness in legal proceedings, publicity refers to the public's full right to attend trial sessions and observe discussions, pleadings, procedures, and judgements².

By giving the public a chance to witness how justice is administered, public hearings act as a deterrent. In addition to holding judges accountable, this guarantees a kind of public scrutiny and keeps outside influences out of the legal system.

Public trial sessions are generally subject to certain legally recognised exceptions. For example, quarantine regulations during the COVID-19 epidemic resulted in courtrooms being vacant. By classifying the epidemic as an exception under Article 07 of Order 20/303, the French parliament permitted modifications to the criminal procedural regulations.

However, the use of remote videoconferencing technology raises a number of legal issues because a fair trial can only be implemented if the court sessions are accessible to the public. By preventing the public from being present in the hearing rooms, this technology permits censorship, which may lead to the assumption that judges are acting arbitrarily and compromises the litigants' guarantees.

Due to the public's lack of personal conviction in electronic litigation, the trial's publicity through the use of distant videoconferencing technology does not produce the intended and necessary advantage in litigation procedures, as is the case when they are effectively practiced³.

Conclusion:

Remote conferencing in court cases has gained popularity due to its many advantages, even if it affects trial procedures and litigants' rights. By enabling hearings and interviews to be held remotely, this technology has established a new legal procedure known as remote trials. This reduces needless travel for both plaintiffs and attorneys, lowers expenses, and effectively speeds up case resolution.

In conclusion, the recommendations that follow are put up to improve the effectiveness of this technique's employment in fair trials:

¹Hassan Sadiq Al-Marsawi, Trial Guarantees in Arab Legislation, (*In Arabic*), Institute of Arab Research and Studies, Cairo, Egypt, 1973, p. 11.

²Awad Mohamed Awad, General Principles in the Code of Criminal Procedure, (*In Arabic*), Knowledge Foundation, Alexandria, 1999, p. 596.

³Amara Abdel Hamid, The Use of Remote Videoconferencing Technology in Investigation and Trial, (*In Arabic*), Arab Journal of Humanities and Social Sciences, Vol. 10, No. 03, p. 68.



- Establishing a legal framework with more precise and thorough texts for distant videoconferencing technology that will solve real-world issues.
- Creating the human foundation that enables justice sector users to stay up to date on any advancements in videoconferencing.
- The necessity of creating a thorough and efficient national strategy to work with this technology, activate it in all judicial bodies, and execute it.
- Ensuring high Internet flow to enable the proper deployment of this technology.
- The Ministry of Justice, its departments, and its courts must all have their own websites that are part of a single information network. Access to hearing schedules and conditions would be made possible by this approach, guaranteeing openness and strengthening the idea of open justice.

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- UN document 2/2013/2 WG/COP/CTOC of August 19, 2013, on Assistance, Good Practice and Comparison of National Legislation in the Field of Identification, Identification and Protection of Victims of Organized Crime, p. 08.